IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19800 of 2004
Date of decision: 15.3.2007

Jado Ram Gupta and another ...Petitioners

Versus

State of Haryana and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE S.N. AGGARWAL

Present: Mr. VK Jain, Senior Advocate with
Mr. Navneet Singh, Advocate,
for the petitioners.

Mr. R.S. Kundu, Additional Advocate General,
Haryana.

K.S.GAREWAL, J.

This petition has been filed by Jado Ram Gupta and his son Mohinder Gupta seeking quashing of the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as **the Act**) dated August 5, 1997 (Annexure P/7) and the declaration issued under Section 6 of the Act dated July 29, 1998 (Annexure P/15). The petitioners are also seeking a direction that the recommendation of the Sub Committee dated October 9, 2002 (Annexure P/20) be also quashed.

The petitioners had purchased 16K 1 M of land, alongwith a factory constructed on the property, for Rs. 13.95 lacs on May 6, 1988. The

petitioners established J.R. Fabrics (P) Ltd. in 1988 and also started a unit called M.K. Textile Industry. Later the petitioners set up Goldtex Furnishing Industry. The total constructed area of the unit was 53674 square feet. The petitioners further purchased 20K 2 M for Rs. 5.62 lacs in November 1989. The petitioners have pleaded that their factory was a profitable unit which exported furnishing fabrics to many countries and had a turn over running into crores of rupees. Its sale for year 2000-2001 was Rs. 8.57 crores, for 2001-2002 Rs. 4.19 crores and from April 1, 2002 to November 30, 2002 sale was Rs. 2.05 crores. The petitioners had installed new machinery worth Rs. 15 crores.

The petitioners' land was included in the notification under Section 4 of the Act dated August 5, 1997 and was part of almost 3058 kanals (382 Acres) acquired for development of an industrial estate. The petitioners filed objections under Section 5-A of the Act on September 15, 1997. The objections were considered by the Land Acquisition Collector, who recommended acceptance of the objections and exemption of 36 kanals 3 marlas from acquisition. Copy of the recommendation is at Annexure P/13. However, when the declaration under Section 6 of the Act was issued on July 29, 1998, only the constructed area of the factory measuring 16 kanals 1 marla, was released from acquisition. The remaining area of 20 kanals 2 marlas, which was being used for disposal of affluents to meet the requirement of the Pollution Control Board, was not released and came under the declaration under Section 6 of the Act.

The petitioners filed CWP 17167 of 1998 which was disposed of alongwith a bunch of other similar cases on September 25, 2000. The following directions were issued on September 25, 2000:-

"a) The petitiones shall be at liberty to make written submissions to the Land Acquisition Collector within four weeks from today.

b) The Sub-Committee, which may be appointed by the State Government, shall consider those submissions and grant hearing to such of the petitioners, as may wish to appear in person.

c) The Sub-Committee shall consider the matter as expeditiously as possible, preferably within three months from the date of receipt of the objections.

d) While considering the claims, the guidelines contained in the letter dated July 10, 1998, a copy of which has been produced as Annexure R1 with the written statement filed on behalf of respondent No.1, shall be kept in view.

e) An attempt shall be made to accommodate the existing structures etc. wherever it is possible. This would, however, not be used as a lever to abandon the project.

f) After the report of the Sub-Committee is considered by the competent authority, the final decision shall be communicated to the petitioners. For a period of four weeks after the communication, status quo, as existing today, shall be allowed to continue, so that anyone, who is not satisfied with the decision, is able to seek his

remedy."

The Sub-Committee re-examined the whole matter, considered the annual turn over of the unit as well as its export turn over and also their requirement for additional land for discharge of affluents. The Sub-Committee recommended some more area for release from acquisition demarcated as 'EFGH' in site plan Annexure P/23. The petitioners were required to pay external and internal development charges and also undertake to provide land free of costs in case it was required for providing basic services by Haryana State Industrial Development Corporation Ltd. (HSIDC). Therefore, the petitioners succeeded in getting some more land excluded from acquisition on certain conditions. The petitioners are still unsatisfied and filed the present petition to seek release of the remaining land.

On behalf of respondents, written statement was filed by the Land Acquisition Collector, Sonipat who referred to the report of the Sub-Committee and the guidelines laid down by HSIDC. The guidelines are being re-produced as under:-

"(i) Continuity of land proposed for acquisition essential for integrated planning.

(ii) Integration of planning and services of the existing Phase-I and EPIP with the land under acquisition.

(iii) Necessary Linkage with NH-1 and widening of the existing linkages available from the NH-I.

(iv) Wherever possible not to disturb the existing industrial units labour colonies of the weaker section and the existing abadies.

(v) The uses non-conforming to the industrial use which are not permissible in the industrial zone such as farm houses, dairies etc. to be acquired. ”

It has been argued that personal hearing was granted to the petitioners on February 14, 2001 where the petitioners had contended that they required additional land for affluent discharge and for further extension of the unit. The representatives of HSIDC had also made their submissions before the Sub-Committee. The Sub-Committee recommended that the land upto killa line EFGH be released provided the petitioners pay internal and external development charges to the concerned authority and also provide land free of cost, out of the released land, for basic services passing through this land, if required by the HSIDC. The remaining land of the petitioners was not recommended for release because it was vacant. If exemption was granted to vacant land it would disturb the contiguity of the project. In this way, the Sub-Committee recommended release of 6 kanals 12 marlas which though vacant was adjacent to the factory. The decision had been taken strictly as per the directions of this Court passed on September 25, 2000.

Furthermore, the respondents pleaded that possession of the remaining vacant land in dispute measuring 13 kanals 10 marlas had been taken on December 17, 2004 in terms of the provisions of Section 16 of the Act and now vested in the State. Copy of S. No. 418 dated December 17, 2004 recorded in daily dairy was annexed as Annexure R/2.

The sole question to be considered is whether the petitioners' remaining land measuring 13 kanals 10 marlas deserved to be released from acquisition or not ? The petitioners' total holding was 36 kanals 3 marlas. After section 4 notification, the petitioners had filed objections under

Section 5-A of the Act. The Land Acquisition Collector had recommended entire holding for release but this recommendation was only partly accepted. 16 kanals 1 marla was released and balance 20 kanals 2 marlas was included in declaration under Section 6. After Court's direction on September 25, 2000 and the constitution of Sub-Committee, 6 kanals 12 marlas had also been recommended for release. The balance area of 13 kanals 10 marlas was not recommended for release and had been acquired. Possession of this area was also taken on December 17, 2004.

This is the second petition that has been filed by the petitioners to challenge the land acquisition proceedings. They had achieved some success in their first petition by getting a Sub-Committee constituted to examine the merits of their case. The Sub-Committee recommended release of further 6 kanals 12 marlas land. The Sub-Committee had examined the matter on the basis of certain specific and detailed guidelines which have been re-produced above. The petitioners have not been able to show which of the guidelines have been violated by the Sub-Committee. The petitioners cannot re-agitate the matter to say that they have been discriminated against because each case of release of acquired land was considered on its own merits and on the basis of specific guidelines. The petitioners had accepted the terms of reference of the Sub-Committee and had also submitted their case before it, therefore, they must abide by the decision taken by the Sub-Committee and can not be allowed to turn away from it to assert grounds which are extraneous to the issue.

While concluding his arguments, the learned Senior Advocate had also submitted that the land coming under the road and beyond may not be released but the petitioners' land upto the road should be returned to

them. Reference by the petitioners to their plan Annexure P/23 shows that the plan was not in accordance with the Sub-Committee's report. The petitioners have marked EFGH as a square plot of land which measures 6 kanals 2 marlas. They have also indicated that this plot has been released but EFGH is not this plot. EFGH is the killa line which has been properly depicted in the site plan Annexure R/1. The Sub-Committee had taken a conscious decision to release the land upto line EFGH and this includes the land of the petitioners' neighbour as well. The petitioners should have been careful in preparing the site plan because their depiction in the site plan that EFGH is a plot was mis-leading. All land beyond line EFGH had been acquired, therefore, no exception can be for the petitioners.

There is no merit in this petition. Dismissed.

(K.S. GAREWAL)
JUDGE

March 15, 2007 **(S.N. AGGARWAL)**
prem **JUDGE**